J.R.T.S. Limited, Inc. *and* United Transportation Union. Cases 12–CA–19487 and 12–CA–19657

December 31, 1998

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND HURTGEN

Pursuant to charges and amended charges filed by United Transportation Union (the Union), the General Counsel of the National Labor Relations Board issued complaints in the above-captioned cases on October 29 and 30, 1998,[1] respectively, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish information following the Union's certification in Case 12–RC–8129. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed answers admitting in part and denying in part the allegations in the complaints and asserting affirmative defenses.

On November 30, 1998, the General Counsel filed a Motion for Summary Judgment. On December 3, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel

Ruling on Motion for Summary Judgment

In its answers, and again in its response, the Respondent admits its refusal to bargain and to furnish information that is relevant and necessary to the Union's role as bargaining representative, but attacks the validity of the certification on the basis of its objections to the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We, therefore, find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

We also find that there are no issues warranting a hearing with respect to the Union's request for information. The Respondent admits that by letter dated August 10, 1998, the Union requested that the Respondent furnish it with the following information and that it has refused to do so:

1. All wages scales and earnings of the van drivers, both hourly and mileage rates.
2. A listing of all van drivers with their date of hire and whether a yard or road driver along with their address and telephone number.
3. All benefits which the drivers are entitled to and if a pension plan, a copy of said plan document.
4. The cost of all health insurance, including the cost of said coverage to JRTS and of all categories, i.e., family, husband/wife, parent/child and employee and who from all of JRTS are covered by the health care insurance.
5. The benefit package of the health care insurance.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Florida corporation, with an office and place of business in Brandon, Florida has been engaged in the business of providing transportation services to employees of certain airline and railway companies. During the 12-month period preceding the issuance of the complaints, the Respondent, in conducting its business operations within the State of Florida, derived gross revenues in excess of $50,000 for the transportation of passengers in interstate commerce under arrangements with and as an agent for various common carriers, including CRX Railways, each of which operates between various States of the United States of America.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election, the Union was certified on June 30, 1998,[2] as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time bus drivers employed by Respondent out of its Brandon, Florida headquarters, excluding all other employees, guards and supervisors as defined in the Act.

[1] The cases were consolidated on November 25, 1998.

[2] 325 NLRB No. 179 (June 30, 1998).

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

Since August 10, 1998, the Union, by letters, has requested the Respondent to bargain and, since August 17, 1998, including by letter to the Union dated October 12, 1998, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

On about January 1, 1998, the Respondent implemented the employee handbook of American Employee Leasing and applied the terms and conditions of employment in said handbook to employees in the unit and on about that same date, the Respondent implemented an employee health insurance plan and applied said plan to employees in the unit.

This handbook and health insurance plan relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

The Respondent took these actions without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to the decisions to implement and the effects of this conduct.

Accordingly, we find this action constitutes a violation of Section 8(a)(1) and (5) of the Act.

The complaint in Case 12–CA–19657 alleges, and the Respondent's answer admits, that on or about August 10, 1998, the Union requested that the Respondent provide it with certain information. The Respondent further admits that it has refused to supply this information but that it would be relevant to the Union's performance of its duties "had the Union been properly certified by the National Labor Relations Board." We find that the information sought is necessary and relevant as alleged in the complaint and accordingly find that the Respondent's refusal to provide it constitutes a violation of Section 8(a)(1) and (5) of the Act.

CONCLUSION OF LAW

By refusing on and after August 17, 1998, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, by implementing a handbook and an employee health insurance plan, and by failing to furnish the Union with the requested relevant information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested, to rescind and cease giving effect to the employee handbook that was promulgated on January 1, 1998, and on request from the Union, discontinue its unlawfully implemented health insurance program for unit employees.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co*., 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board that the Respondent, J.R.T.S. Limited, Inc., Brandon, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Transportation Union, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) Unilaterally promulgating an employee handbook without first notifying the Union and giving it an opportunity to bargain collectively concerning the handbook.

(c) Unilaterally establishing a health insurance program for its unit employees without prior notice to, and bargaining with, the Union concerning such program.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time bus drivers employed by Respondent out of its Brandon, Florida headquarters, excluding all other employees, guards and supervisors as defined in the Act.

(b) Rescind and cease giving effect to the employee handbook which was promulgated to employees on January 1, 1998.

(c) On requestof the Union, discontinue its unlawfully implemented health insurance program for unit employees.

(d) On request, furnish the Union the information that it requested on about August 10, 1998.

(e) Within 14 days after service by the Region, post at its facility in Brandon, Florida, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 12 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 17, 1998.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 31, 1998

John C. Truesdale	Chairman
Sarah M. Fox,	Member
Peter J. Hurtgen,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to bargain with United Transportation Union as the exclusive representative of the employees in the bargaining unit and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its roles as the exclusive bargaining representative of the unit employees.

WE WILL NOT unilaterally promulgate an employee handbook without first notifying the Union and giving it an opportunity to bargain collectively concerning the handbook.

WE WILL NOT unilaterally establish a health insurance program for our unit employees without prior notice to, and bargaining with, the Union concerning such program.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> All full-time and regular part-time bus drivers employed by us out of our Brandon, Florida headquarters, excluding all other employees, guards and supervisors as defined in the Act.

WE WILL rescind and cease giving effect to the employee handbook which was promulgated to employees on January 1, 1998.

WE WILL, on request of the Union, discontinue our unlawfully implemented health insurance program for unit employees.

WE WILL, on request, furnish the Union the information it requested on August 10, 1998.

J.R.T.S. LIMITED, INC.